

1. **THE STATE OF TEXAS, COUNTY OF DALLAS, ss. I, _____, Clerk of the County Court, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of the County Court of the County of Dallas, State of Texas.**

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AUG 16 2004

MR

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

CV 04-1788

NO.

Petitioners.

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**CONFEDERATED TRIBES OF THE
GRAND RONDE COMMUNITY OF
OREGON, an Oregon Native American
Tribe.**

Respondent.

**PETITION AND MOTION TO CONFIRM
ARBITRATION AWARD**

NOTE ON MOTION CALENDAR:
September 10, 2004

Petitioners Strategic Wealth Management, Inc., Patrick Sizemore, Paradigm Financial Services, Inc., and Mark Sizemore come now and respectfully submit this Petition and Motion to Confirm an Arbitration Award Pursuant to 9 U.S.C. § 9.

PETITION AND MOTION TO CONFIRM
ARBITRATION AWARD - 1

(No,)

#512123 v1 / 32895-0018

Law Offices
KARR-TUTTLE-CAMPBELL

Professional Service Corporation

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JURISDICTION AND VENUE

1. Petitioner Strategic Wealth Management, Inc. ("*SWM*") is a corporation organized and in good standing under the laws of the State of Washington and has offices at 7900 S.E. 28th Street, Suite 500, Mercer Island, Washington 98040-6004.

2. Petitioner Patrick Sizemore is a resident of the State of Washington and president of petitioner SWM.

3. Petitioner Paradigm Financial Services, Inc. ("*Paradigm*") is a corporation organized and in good standing under the laws of the State of Washington and has offices at 7900 S.E. 28th Street, Suite 550, Mercer Island, Washington 98040-6004.

4. Petitioner Mark Sizemore is a resident of the State of Washington and president of petitioner Paradigm.

5. Respondent Confederated Tribes of the Grand Ronde Community of Oregon ("*CTGR*") is a recognized Native American Tribe located in the State of Oregon.

6. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1332 and 9 U.S.C. §§ 1, 2 and 9. The Petitioners and Respondent, who are located in Washington and Oregon, respectively, have agreed that the award of arbitrators shall be final and judgment upon the award rendered may be entered into any court, State or Federal, having jurisdiction.

7. Venue in this Court is proper pursuant to 9 U.S.C. § 9. The Arbitration Award was issued in Seattle Washington, located in the Western District of Washington.

FACTUAL AND PROCEDURAL BACKGROUND

8. CTGR engaged petitioner SWM to provide investment advisory services. To that end, the parties executed an Investment Advisory Agreement (the "*Agreement*," attached as Exhibit A to the Declaration of John Baier submitted herewith) which included an arbitration clause providing that the parties would submit "all controversies which may arise between [the parties] concerning any transaction or the construction, performance or breach of this or any other agreements between them" to arbitration before the American Arbitration Association ("AAA").

9. A dispute did arise in which CTGR sought from Petitioners SWM and Patrick Sizemore damages and attorneys fees for alleged losses arising from the performance of the Agreement. Contrary to the Agreement's arbitration clause, CTGR sued SWM and Patrick Sizemore in Multnomah County Circuit Court, Oregon, in November 2001. Petitioners Paradigm and Mark Sizemore also were named in the action under various statutory and tort claims. After a protracted battle, SWM was successful in having the court enforce the arbitration clause by: (1) ruling that the lawsuit should never have been filed; (2) compelling arbitration; and (3) dismissing the lawsuit. The court held, in an order submitted to the court by agreement of the parties:

The arbitration provision of the 1992 Agreement applies to all controversies which may arise concerning any transaction between the parties or the construction, performance or breach of that agreement or any other agreements between the parties, whether entered into prior, on, or subsequent to the date of the 1992 Agreement

PETITION AND MOTION TO CONFIRM
ARBITRATION AWARD - 3

(No. _____)
#512123 v1 / 32895-008

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(The order of the Multnomah County Circuit Court is attached as Exhibit B to the Baier Declaration.) The same order dismissed the action. CTGR did not appeal this ruling.

10. CTGR entered into a Stipulation Regarding Binding Arbitration with counsel for Mark Sizemore and Paradigm dated October 29, 2002, and filed with the Multnomah County Circuit Court on December 2, 2002 (Exhibit C to the Baier Declaration), under which CTGR expressly and unequivocally agreed to submit

to binding arbitration of all claims between them arising from the transactions and dealings currently the subject of this lawsuit. Such claims shall be arbitrated before the American Arbitration Association together with the claims between plaintiff and defendants Strategic Wealth Management, Inc. and Patrick Sizemore.

11. Consequently, the court's concomitant Order Granting Defendants Strategic Wealth Management, Inc.'s and Patrick Sizemore's Motion to Compel Arbitration (Exhibit B to the Baier Declaration) further provides that:

By stipulation dated October 29, 2002, between plaintiff Confederated Tribes of the Grand Ronde Community of Oregon and defendants Paradigm Financial Service, Inc., and Mark Sizemore, all claims and controversies by and between those parties are subject to binding arbitration.

12. CTGR filed a Demand for Arbitration with the AAA in February 2003, submitting the claims between the parties to binding arbitration under the AAA rules. A hearing was conducted from March 30 to April 27, 2004, in Seattle, Washington, before arbitrators Earl P. Lasher III, Philip E. Cutler, and Thomas J. Brewer (the "*Panel*").

13. On May 6, 2004, the Panel issued an Interim Award which rejected all of CTGR's claims. Subsequent to the Interim Award, Petitioners submitted to the Panel their

PETITION AND MOTION TO CONFIRM
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1 respective requests for an award of attorneys fees and costs. On August 13, 2004, after
 2 considering briefs submitted by all parties, the declarations of Petitioners' counsel and
 3 exhibits supporting the requests for fees and costs, the Panel issued a Final Award
 4 (hereinafter the "Award," a copy of which is attached as Exhibit D to the Baier
 5 Declaration), incorporating the Interim Award and granting Petitioners Patrick Sizemore
 6 and SWM, Inc. attorneys fees and costs in the amount of \$1,471,023.70, and Petitioners
 7 Mark Sizemore and Paradigm attorneys fees and costs in the amount of \$252,167.41.
 8 Pursuant to the Award, any sums remaining unpaid after thirty (30) days from the date of
 9 the Award shall bear interest at the rate of twelve percent (12%) per annum from such date
 10 until paid. See Exhibit D to the Baier Declaration at 58.

13 14. The arbitration clause contained in the Agreement provides that "[t]he award
 14 of arbitrators or a majority of them, shall be final and judgment upon the [a]ward rendered
 15 may be entered into any court, State or Federal, having jurisdiction." See Exhibit A to the
 16 Baier Declaration at 4, ¶ 11(h). Further, AAA Rule 48(c) provides that "[p]arties to an
 17 arbitration under these rules shall be deemed to have consented that judgment upon the
 18 arbitration award may be entered in any federal or state court having jurisdiction thereof."

19 15. The Award is final and binding upon CTGR and Petitioners, and has not
 20 been vacated, modified or corrected. The Award is therefore entitled to confirmation
 21 pursuant to 9 U.S.C. § 9, the parties' arbitration agreement and AAA Rule R-48(c).

REQUEST FOR RELIEF

WHEREFORE, Petitioners hereby petition and move this Court for relief as follows:

A. For an order confirming the Award;

B. For judgment against Respondent in conformity with the Award as follows:

1. In favor of Petitioners Patrick Sizemore and Strategic Wealth Management, Inc. in the sum of \$1,471,023.70, together with interest as provided therein, and for reimbursement of the filing fee in the amount of \$75.00 and for attorneys' fees of \$1,500.00 if this Petition is uncontested, or for attorneys' fees and costs in an amount deemed reasonable by the Court if this Petition is contested, pursuant to *Emerald People's Util. Dist. v. PacifiCorp*, 104 Or. App. 504, 507, 801 P.2d 141 (1990); *Johnson v. Jeppe*, 77 Or. App. 685, 688, 713 P.2d 1090 (1986); and *Steele v. Lundgren*, 96 Wn. App. 773, 779, 781-82, 982 P.2d 619 (1999); and

2. In favor of Petitioners Mark Sizemore and Paradigm Financial Services, Inc. in the sum of \$252,167.41, together with interest as provided therein, and for reimbursement of the filing fee in the amount of \$75.00 and for attorneys' fees of \$1,500.00 if this Petition is uncontested, or for attorneys' fees and costs in an amount deemed reasonable by the Court if this Petition is contested, pursuant to *Emerald People's Util. Dist. v. PacifiCorp*, 104 Or. App. 504, 507, 801 P.2d 141 (1990); *Johnson v. Jeppe*, 77 Or. App. 685, 688, 713 P.2d 1090 (1986); and *Steele v. Lundgren*, 96 Wn. App. 773, 779, 781-82, 982 P.2d 619 (1999); and

PETITION AND MOTION TO CONFIRM
ARBITRATION AWARD - 6

(No. _____)
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1 C. For such other and further relief as the court may deem proper.

2 Respectfully submitted this 16th day of August, 2004.

3 KARR TUTTLE CAMPBELL

4
5 s/Erik R. Lied

6 Erik R. Lied, WSBA #11105

7 Walter E. Barton, WSBA #26408

8 John I. Baier, WSBA #34206

9 Attorneys for Petitioners

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17 jbaier@karrtuttle.com

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28 PETITION AND MOTION TO CONFIRM
ARBITRATION AWARD - 7

(No. _____)

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2004, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF.

I hereby further certify that I will caused to be served by Legal Process Service the following non-CM/ECF participants:

Stephen S. Walters
Stoel Rives LLP
900 SW Fifth Ave., Ste. 2600
Portland, OR 97204-1268

The Confederated Tribes of Grand Ronde
9615 Grand Ronde Rd
Grand Ronde, OR 973

s/ Erik R. Lied

Erik R. Lied, WSBA #11105

Walter E. Barton, WSBA #26408

John I. Baier, WSBA #34206

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PETITION AND MOTION TO CONFIRM
ARBITRATION AWARD - 8

(No. _____)

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